

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

**MOISES MARES D/B/A AARON'S
TIRE AND REPAIR SERVICE, §**

Plaintiff, §

v. §

**SCOTTSDALE INSURANCE
COMPANY, §**

Defendant. §

**CIVIL ACTION NO. 1:19-cv-00504
JURY**

SCOTTSDALE INSURANCE COMPANY'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant SCOTTSDALE INSURANCE COMPANY (“Scottsdale”) files its Notice of Removal to the United States District Court for the Eastern District of Texas, Beaumont Division, on the basis of diversity of citizenship, and amount in controversy, and respectfully shows the following:

I. PROCEDURAL BACKGROUND

1. On August 22, 2019, Plaintiff Moises Mares d/b/a Aaron's Tire and Repair Service (“Mares” or “Plaintiff”) filed his Original Petition in a case styled *Moises Mares d/b/a Aaron's Tire and Repair Service v. Scottsdale Insurance Company*; Cause No. CV1915043, pending in the 253rd Judicial District Court, Liberty County, Texas.

2. Scottsdale received a copy of the Plaintiff's Original Petition on September 25, 2019.

3. Scottsdale files this notice of removal within 30 days of receiving Plaintiff's Original Petition. *See* 28 U.S.C. § 1446(b). This Notice of Removal is being filed within one year of the commencement of this action. *see id.*

4. All pleadings, process, orders, and other filings in the state court action are attached to this Notice as required by 28 U.S.C. § 1446(a).

5. Attached hereto are copies of the following documents:

- **Exhibit 1:** State Court Docket Sheet;
- **Exhibit 2:** Plaintiff's Original Petition;
- **Exhibit 3:** Citation served upon Scottsdale;
- **Exhibit 4:** Defendant Scottsdale Insurance Company's Original Answer to Plaintiff's Original Petition; and
- **Exhibit 5:** List of Parties and Counsel and Other Information.

II. BASES FOR REMOVAL

6. Removal is proper based on diversity of citizenship under 28 U.S.C. §§ 1332(a)(1), 1441(a), and 1446.

A. Plaintiff and Defendant Scottsdale are diverse.

7. **Plaintiff, Moises Mares**, is an individual residing in Texas operating under the Assumed Name of **Aaron's Tire and Repair Service** in Liberty County, Texas.

8. **Defendant**, Scottsdale Insurance Company, is incorporated under the laws of the State of Ohio, with its principal place of business in Scottsdale, Arizona. Scottsdale is therefore not a citizen of the State of Texas for diversity purposes.

9. Thus, this lawsuit is between citizens of different states, and there is complete diversity of citizenship between Plaintiff and Scottsdale.

B. The Amount in Controversy Exceeds the Jurisdictional Requirements for Subject Matter Jurisdiction.

10. In determining the amount in controversy, the court may consider "policy limits... penalties, statutory damages, and punitive damages." *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); *see Ray v. State Farm Lloyds*, No. CIV.A.3:98-

CV-1288-G, 1999 WL 151667, at * 2-3 (N.D. Tex. Mar. 10, 1999) (finding a sufficient amount in controversy in plaintiff's case against their insurance company for breach of contract, fraud, negligence, gross negligence, bad faith, violations of the Texas Insurance Code, violations of the Texas Deceptive Trade Practices Act, and mental anguish); *Fairmont Travel, Inc. v. George S. May Int'l Co.*, 75 F. Supp.2d 666, 668 (S.D. Tex. 1999) (considering DTPA claims and the potential for recovery of punitive damages for the amount in controversy determination); *Chittick v. Farmers Ins. Exch.*, 844 F. Supp. 1153, 1155 (S.D. Tex. 1994) (finding a sufficient amount in controversy after considering the nature of the claims, the types of damages sought and the presumed net worth of the defendant in a claim brought by the insureds against their insurance company for actual and punitive damages arising from a claim they made for roof damages).

11. This is a civil action in which the claim for relief in Paragraph 64 of Plaintiff's petition indicates Plaintiff "seeks monetary relief over \$200,000 but not more than \$1,000,000." Plaintiff alleges that defendant is liable under a commercial insurance policy because Plaintiff made a claim under that policy and defendant wrongfully adjusted and underpaid Plaintiff's claim. This demonstrates that the amount in controversy in this case exceeds the jurisdictional requirements.

III. THIS REMOVAL IS PROCEDURALLY CORRECT

12. Scottsdale received a copy of this lawsuit on September 25, 2019. Thus, Scottsdale is filing this Notice within the 30-day time period required by 28 U.S.C. § 1446(b).

13. Venue is proper in this District and Division under 28 U.S.C. §1446(a) because i) this District and Division include the county in which the state action has been pending, and ii) a substantial part of the events giving rise to Plaintiff's claims allegedly occurred in this District and Division.

14. Pursuant to 28 U.S.C. §1446(a), all pleadings, process, orders, and all other filings in the state court action are attached to this Notice.

15. Promptly after Scottsdale files this Notice of Removal, written notice of the filing will be given to Plaintiff pursuant to 28 U.S.C. §1446(d).

16. Promptly after Scottsdale files this Notice of Removal, a true and correct copy of same will be filed with the District Clerk of the Liberty County District Court pursuant to 28 U.S.C. §1446(d).

IV. CONCLUSION

17. Based upon the foregoing, the exhibits submitted in support of this removal, and other documents filed contemporaneously with this Notice of Removal, Defendant Scottsdale Insurance Company hereby removes this case to this Court for trial and determination.

Respectfully submitted,

By: /s/ George Arnold
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**ATTORNEYS FOR DEFENDANT
SCOTTSDALE INSURANCE COMPANY**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 16, 2019, a true and correct copy of the foregoing instrument was served upon all known counsel of record in accordance with the Federal Rules of Civil Procedure, and any applicable Local Rules, as follows:

Shane McClelland
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/s/ George Arnold
George Arnold